

## Internal Revenue Service

Number: **200702019**

Release Date: 1/12/2007

Index Number: 7871.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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CC:TEGE:EOEG:TEB

PLR-122670-06

Date:

September 27, 2006

### LEGEND:

Member Tribes =

Authority =

Dear

This letter responds to your request for a ruling, submitted by your authorized representative on behalf of Authority, that Authority is an instrumentality of the Member Tribes for purposes of § 7871(a) of the Internal Revenue Code (the "Code").

### **Facts and Representations**

You make the following factual representations. Each of the five Member Tribes is listed in Rev. Proc. 2002-64, 2002-2 C.B. 717, as an Indian tribal government that is to be treated similarly to a state for specified purposes under the Code. Authority is not included in the list of political subdivisions of Indian tribal governments published in Rev. Proc. 84-36, 1984-1 C.B. 510, modified, Rev. Proc. 86-17, 1986-1 C.B. 550.

The inherent powers of each of the Member Tribes include management authority over reservation resources and off-reservation resources to which the Member Tribe has rights. The Member Tribes established Authority to formulate natural resource programs to promote and coordinate the management, conservation, enhancement,

and enforcement practices of the Member Tribes. Authority is required to work with the Member Tribes to ensure uniform enforcement of laws regarding the preservation of cultural and natural resources. Membership and ownership of Authority is limited to Indian tribes recognized as Indian tribal governments that are to be treated similarly to states and requires ratification of Authority's constitution and bylaws by tribal resolution.

The governing body of Authority is Authority Commission, which is composed of five Commissioners. Each Member Tribe elects, according to its tribal law, one Commissioner as its representative. Commissioners serve three year terms and must be enrolled members and elected officials of their respective Member Tribes.

Authority receives its policy direction from the Member Tribes through Authority Commission. Authority Commission approves, oversees, and monitors Authority programs, including approval of annual budgets, contracts, and grants. Actions of Authority Commission are prohibited from impairing, abridging, or superseding the sovereign rights or powers vested in the Member Tribes. Each Commissioner is entitled to one vote on issues before Authority. Decisions regarding regular business may only be made by a majority vote of the Commissioners at a meeting, with a quorum of at least three of the Commissioners. Issues that directly affect or impact a Member Tribe's interests or sovereignty, however, require a consensus vote of all the Commissioners. In the event a Commissioner votes inconsistently with the position of the Member Tribe he or she represents, the Member Tribe may issue a formal letter recording the Member Tribe's official position, thus negating and supplanting that Commissioner's vote regarding those issues.

Authority receives all of its funding from federal appropriations through the Department of the Interior, Bureau of Indian Affairs, and in-kind contributions from the Member Tribes. In-kind contributions from the Member Tribes include use of Member Tribe staff and other resources.

### **Law and Analysis**

Section 7701(a)(40)(A) provides that the term "Indian tribal government" means the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions.

Section 7871(a) provides that an Indian tribal government shall be treated as a State for certain purposes. Rev. Proc. 2002-64 lists Indian tribes that are to be treated similarly to states for specified purposes under the Code.

Revenue Ruling 57-128, 1957-1 C.B. 311, sets forth the following factors to be taken into account in determining whether an entity is an instrumentality of one or more governmental units: (1) whether the organization is used for a governmental purpose

and performs a governmental function; (2) whether performance of its function is on behalf of one or more states or political subdivisions; (3) whether there are any private interests involved, or whether the states or political subdivisions have the power and interests of an owner; (4) whether control and supervision of the organization is vested in a public authority or authorities; (5) whether express or implied statutory or other authority is necessary for the creation and/or use of the organization, and whether this authority exists; and (6) the degree of financial autonomy of the entity and the source of its operating expenses.

The Member Tribes are all recognized as Indian tribal governments that are to be treated similarly to states for specified purposes under the Internal Revenue Code.

Authority is used for a governmental purpose and performs a governmental function on behalf of the Member Tribes. Authority was established to formulate natural resource programs to promote and coordinate the management, conservation, enhancement, and enforcement practices of the Member Tribes. Authority is also required to work with the Member Tribes to ensure uniform enforcement of laws regarding the preservation of cultural and natural resources.

There are no private interests in Authority and the Member Tribes have the power and interests of an owner. Control and supervision is vested in the Member Tribes. Authority was established through ratification of its constitution and bylaws by resolutions of each Member Tribe, and receives its policy direction from each Member Tribe through Authority Commission. Membership and ownership of Authority is limited to Indian tribes that are to be treated similarly to states. The governing body of Authority is Authority Commission, composed of five Commissioners elected by the Member Tribes as their respective representatives. Actions of Authority Commission are prohibited from impairing, abridging, or superseding the sovereign rights or powers vested in the Member Tribes. Member Tribes may supplant their respective Commissioner's vote if inconsistent with the position of that tribe.

Ratification of its constitution and bylaws by resolution of each Member Tribe is required for use of Authority, and each Member Tribe has passed such a resolution. The Member Tribes established Authority through exercise of their inherent powers.

The Member Tribes control the financial affairs of Authority. Authority is funded entirely with federal appropriations through the Department of the Interior, Bureau of Indian Affairs, and in-kind contributions from the Member Tribes. The Member Tribes through Authority Commission must approve and monitor all Authority annual budgets, contracts, grants, and modifications.

### **Conclusion**

Based on the information submitted and representations made, we conclude that Authority is an instrumentality of the Member Tribes for purposes of § 7871(a).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to Authority's authorized representative.

The ruling contained in this letter is based upon information and representations submitted by Authority and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Assistant Chief Counsel  
(Exempt Organizations/Employment Taxes/  
Government Entities)

By: Johanna Som de Cerff  
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